IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WP(C).No. 14858 of 2006(R)

PETITIONER:

KALYANI CHELLAMMA, W/O.LATE O.A.GOVINDAN, KANNITTAVELIYIL, KUTHIRAPPANTHY WARD, ALAPPUZHA 688 002.

BY ADV. SRI.K.K.SATHEESH

RESPONDENTS:
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1. **UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, FREEDOM FIGHTERS DIVISION, LOK NAYAK BHAVAN, KHANMARKET, NEW DELHI 110 003.**

2. **STATE OF KERALA, REPRESENTED BY THE SECRETARY, GENERAL ADMINISTRATION (FFP-A) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

BY ADV. SRI.MANOJ RAMASWAMY, ADDL.CGSC
BY GOVERNMENT PLEADER SRI.V.T.K.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.14858/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER (PROCEEDINGS SHEET) IN SC. NO.14/1953 ON THE FILE OF THE HONOURABLE SESSIONS COURT, ALLEPPEY.

EXT.P2:- COPY OF THE LETTER ISSUED BY THE DISTRICT COLLECTOR, ALAPPUZHA INVITING PETITIONER'S LATE HUSBAND TO RECEIVE "THAMARAPATHRA" VIDE LETTER DT. 4.8.73.

EXT.P3:- COPY OF THE APPLICATION DT. 24.4.98 SUBMITTED BY THE PETITIONER FOR THE GRANT OF SSS PENSION TO THE RESPONDENTS.

EXT.P4:- COPY OF THE AFFIDAVIT SUBMITTED BY THE PETITIONER DULY ATTESTED BY THE JUDICIAL IST CLASS MAGISTRATE, ALAPPUZHA DT. 26.11.03.

EXT.P5:- COPY OF THE JUDGMENT DT. 16.2.06 OF THIS HONOURABLE COURT IN WPC 39387/03.

EXT.P6:- COPY OF THE COMMUNICATION NO.52/CC/K/1/06-FF(SZ) DT. 28.4.06 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P7:- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT DT. 8.5.06.

/TRUE COPY/

P.A. TO JUDGE

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T.R.RAMACHANDRAN NAIR, J.

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WP(C).No.14858 of 2006-R.

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Dated this the 10th day of August, 2007.

J U D G M E N T

The petitioner is the widow of late Sri.O.A.Govindan who was a freedom fighter and was actively involved in the Punnapra-Vayalar movement during the freedom struggle. He was the 23rd accused in case No.P.E.9/1122 ME in which pursuant to an arrest warrant issued against him by the then Special Magistrate Court, Alappuzha he had absconded for a period of more than three years from October, 1946 to January, 1950. Thereafter the police arrested him on 1.5.1950 and the prosecution instituted a separate proceedings against the absconding accused before the Sessions Court, Alappuzha as per S.C.No.14/1953 in which he was the 4th accused. He had undergone under-trial imprisonment for a period of 46 months from 1.5.1950 to 15.3.1954 till he was acquitted by the Sessions Court, Alappuzha on 15.3.1954. This is evidenced by Ext.P1 proceedings sheet of the case S.C.No.14/1953, the same has been issued by the Sessions Court, Alappuzha.

2. The petitioner's late husband was granted Kerala Freedom Fighters Pension with effect from 1.4.1971 as per the proceedings of the District Collector, Alappuzha dated 29.6.1972. He died on 2.12.1989 and after that the petitioner is getting the dependent family pension under the State

Pension Scheme as per the proceedings of the District Collector, Alappuzha as per Order No. H4-2099/90 dated 20.1.1990. He was also honoured by conferring 'Thamrapathra' by the Government of India, which is evidenced by Ext.P2. The Punnapra-Vayalar struggle was recognised by the Government of India as part of National Freedom Struggle with effect from 20.1.1998. Thereafter the petitioner submitted application for SSS Pension as per Ext.P3. As primary evidence she had produced Ext.P1 herein and also the personal knowledge certificate from a prominent freedom fighter Sri.C.G.Sadasivan, Ex-MLA. Since there was undue delay in the matter the petitioner approached this Court by filing WP(C).No.39387/2003 which was disposed of by Ext.P5 judgment. The learned Single Judge was pleased to notice that her application had been recommended by the State Government as evidenced from para.4 of the counter-affidavit filed by the 2nd respondent State and accordingly the first respondent was directed to pass final orders on her application within a time limit. But by Ext.P6 her application has been rejected and the same is under challenge in this writ petition.

3. In Ext.P6 the apparent view taken to reject the application is that the petitioner had not produced any acceptable primary evidence from official records in support of the claimed sufferings. Then it is stated that in the absence of such documentary evidence the NARC and the personal knowledge certificate have not been produced. Finally it is stated that the

recommendation of the State Government is not binding.

4. The learned counsel for the petitioner submitted that in para.3 of Ext.P6 itself it has been recorded that a copy of the judgment in S.C.No.14/53 was also been furnished. A reading of the order Ext.P6 shows that the findings rendered therein are totally without any application of mind. As far as the finding that no primary evidence have been produced is concerned, it is evident from Ext.P1 that the same amounts to primary evidence. Col.3 gives the name of the accused and the petitioner's late husband is the 4th accused. The case number is mentioned at the top of the case sheet as SC 14/53 and the number P.E.2/24 is also mentioned. Col.No.8 gives the details of the dates on which the various accused were arrested and in relation to A4 the date is 1.5.1950. The date when they were committed, the date on which the trial started and ended and the date of judgment is also mentioned in columns 9 to 12. It is evident from Col.15 that the petitioner's husband was one among the accused who were acquitted. This being a certified copy of the proceedings of the Sessions Court, Alappuzha, it could not have been ignored by the Government of India. It is also noticeable from Ext.P6 that a copy of the judgment was also forwarded by the petitioner to the first respondent. It is, therefore, beyond comprehension as to how a finding has been rendered that primary evidence has not been produced in support of the application. In Ext.P5 judgment this Court was pleased to notice that the application has

been recommended by the State Government. It is clear that when the State Government had recommended the application all the details regarding the Sessions case and the details of the under-trial imprisonment of the petitioner were available with the State Government also. In the counter-affidavit filed by the first respondent the stand taken in Ext.P6 is sought to be supported. No dispute has been raised about the contents of Ext.P1 or that it is not an authenticated record.

5. In the light of the fact that there is acceptable primary evidence and also official records in the nature of the judgment in the Sessions case the other finding regarding non-production of NARC and personal knowledge certificate are immaterial as they were not required under the scheme if there is primary evidence to support the claim. In the light of the above it is clear that the approach made by the authorities are purely technical. Even though the petitioner was successful to produce all the details, the same has been discarded without valid and acceptable reasons. The same amounts to an apparent error warranting interference. As held by the Apex Court in *Cholan Roadways Ltd. v. G.Thirugnanasambandam* (2005(3) SCC 241) even an error of fact can also be subject matter of judicial review. Further in the light of the decision of the Supreme Court in *Gurdial Singh v. Union of India* (2001(8) SCC 8) the approach cannot be too technical and the standard of proof required is not as in a criminal case. Here, in view of the fact that the

petitioner had produced Ext.P1 along with Ext.P3 application, I find that the petitioner's claim for pension is clearly established and it is declared so. Ext.P1 evidences the under trial imprisonment of the petitioner's late husband which is sufficient as per the scheme going by the decisions of this Court including the Full Bench decision reported in *Union of India v. Peter Devassia* [2003(1) KLT 467 (FB)]. Ext.P6 is hereby quashed. There will be a direction to the first respondent to pass consequential orders sanctioning pension to the petitioner from the date of receipt of her application. The same shall be done within a period of two months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-